

Victorian Co-operative News

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Current laws inhibit interstate trade

Co-operatives traditionally have operated within State borders. In recent years, some co-operatives have sought to expand their operations interstate. However, because of inconsistencies between the various co-operative's legislation in the States and Territories, co-operatives wishing to trade interstate are faced with major legal difficulties.

Jenni Mattila, a partner of Tress Cocks & Maddox, outlines the main difficulties of trading interstate and of the proposed reforms to address these important issues.

Australia is a federation of 8 different States and Territories. There are 8 different legal jurisdictions which may impact on co-operatives seeking to trade nationally.

Only Victoria and New South Wales have legislation which allows co-operatives originally incorporated in other States and Territories (the "foreign co-operative") to register simply as a "foreign co-operative" and to trade as such. In all other States and Territories, the foreign co-operative operates under profound legal difficulties: In another State **YOUR** co-operative is a foreign co-operative!

'Co-operatives should not operate across State borders without the approval of the interstate Registrar'

Corporations Law requires a "corporation" to issue a prospectus when it is allotting shares to the public.

At first glance, co-operatives would be required to issue a prospectus when accepting members by issuing membership shares. However, co-operatives trading under their home State legislation are exempted by section 66A of the Corporations Law from this definition of "corporation". Therefore, the prospectus requirement does not apply to them.

Foreign co-operatives registered as foreign societies or foreign co-operatives in Victoria or New South Wales are also exempt from issuing prospectuses in relation to their shares. However, a foreign co-operative wishing to

issue shares to members in any State other than Victoria or New South Wales would need to issue a prospectus.

A Victorian co-operative, for instance, wishing to trade in Queensland, South Australia, Tasmania, Western Australia or the Territories, would need to issue a prospectus when issuing shares to members in those States where there are more than 20 issues of shares in the preceding 12 months.

'Co-operatives should not allot more than a limited number of share issues to existing or new members interstate'

The cost of prospectuses is rarely less than \$100,000 and they normally have a life of six months. In its home State, however, a co-operative need only provide new members with an application form, and usually a copy of the rules and the latest audited accounts.

The cost of complying with the prospectus requirements often far outweighs the benefits the co-operative would obtain by seeking new members interstate or issuing existing members with additional shares. The number of shares a member takes up is usually relatively low compared to a share issue by a public company operating under the Corporations Law.

Many co-operatives are small organisations, and could not afford the cost involved in issuing a prospectus. The impact of the Corporations Law on the issue of membership shares across State borders is inappropriate and impractical given the nature of co-operative shares and the co-operative membership structure.

In most States, foreign co-operatives are prohibited from using the word "co-operative" as part of their names, unless they are registered under the foreign State's legislation.

This means that Victorian co-operatives as well as other co-operatives incorporated outside that State cannot carry on business in another State using their own name without the interstate Registrar's approval.

'Co-ops trading interstate can't use "co-operative" in their name unless registered as a foreign co-operative or have approval from the Registrar'

If there are no approval provisions for the use of the word "co-operative" by an existing organisation, the foreign co-operative would need to operate through a separate company or incorporate a new co-operative in the foreign jurisdiction.

If the foreign co-operative were to change its name in its home State to exclude the word "co-operative", it may then be breaching the requirement State that "co-operative" be part of its name.

Proposed reforms

The current situation clearly highlights co-operative laws are in urgent need of reform as they do not easily allow co-operatives to compete under normal commercial conditions when trading across State borders.

The current laws cause difficulties for co-operatives seeking to increase their membership interstate or merely maintaining existing members who have moved across State borders. Current laws also impede the growth of co-operatives, especially growth over State borders, and damage the export aspirations of agricultural co-operatives who need economies of scale to compete in international markets and to cope with the pressures of de-regulation in the domestic market.

In response, the State and Territory Ministers for Agriculture and the Standing Committee of Attorneys-General resolved to investigate in detail, options for a national model of legislation for Australian co-operatives.

(Continued on page 2)

Interstate trade

(Continued from page 1)

Proposals are being developed to assist co-operatives in meeting the need for capital growth and to cope with the demands of modern economic conditions, increasing

inside...

**National Competition Policy
Minister commends certificate course
Report from the Board**

**page 2
page 3
page 4**

National Competition Policy may affect co-operatives

Proposed changes to the *Trade Practices Act* may affect co-operatives that have supply or service contracts with their members.

The Committee which reviewed National Competition Policy, chaired by Professor Hilmer, considers the current exemption in the *Trade Practices Act* permitting State and Territory Acts to specifically authorise conduct that would otherwise contravene the Act, is inappropriate.

The Act prohibits the practice of exclusive dealing in various ways described in section 47 of that Act. However, the Act exempts from its operation acts or things which are specially authorised or approved by State legislation.

Victorian co-operatives that use section 82 of the State's *Co-operation Act*, may be affected if the exemption is removed.

Section 82 provides for a co-operative, if authorised by its rules, to make a contract with a member requiring the member to have any specified dealings with the co-operative for a fixed period, and to require that member to sell products through or to the co-operative or to obtain supplies or services through or from the co-operative.

The section also provides that such contracts shall be binding upon the co-operative and all other parties but for the Co-operation Act, the contract would be invalid as being in restraint of trade.

The provisions of section 82 recognise the unique character of a co-operative which underlies the relationship between a co-operative and its members.

As many co-operatives exist for the purpose of assisting members in the conduct of their business, continuity of business dealings between a co-operative and its members is specially important in the proper formulation and implementation of management policies in a co-operative.

These special considerations applying to co-operatives are given recognition (and appropriate exemption from the general law principles of restraint of trade) by section 82, which permits co-operatives to impose supply and purchase obligations on members.

The Committee has recommended that no future exemption by State or Territory

Background

The origin of National Competition Policy (NCP) is the agreement between the Federal, State and Territories Governments in 1992 that lead to the enunciation of four main principles:

- (a) *No participant in the market should be able to engage in anti-competitive conduct against the public interest;*
- (b) *As far as possible, universal and uniformity applied rules of market conduct should apply to all market participants regardless of the form of business ownership;*
- (c) *Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review to demonstrate the nature and incidence of the public costs and benefits claimed;*
- (d) *Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:*
 - (i) *to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition;*
 - (ii) *in recognition of the increasingly national operation of markets to*

Statute or Regulations should be permitted, and all existing exemptions should be deemed to expire at the end of three years.

The Committee recognised that 'there may be cases where the application of the proposed market conduct rules should be suspended or adjusted on public interest grounds, primarily where the benefits of the conduct in question are found to outweigh the anti-competitive detriments.'

If the above proposals were to become law, co-operatives who wish to maintain member contracts may first need to seek authorisation from the Trade Practices Commission or its replacement body.

Such an application for authorisation, on current rates, would cost \$7,500 plus costs in preparing the application. □

As the *Co-operation Act* is a State act,

reduce complexity and administrative duplication.

Out of this agreement was developed a terms of reference for the NCP Inquiry, that resulted in the publication of the NCP Report in 1993. The report has become known as the Hilmer Report.

The recommendations are far ranging, and may affect co-operatives in a variety of ways depending upon the industry conditions and legislation under which a particular co-operative operates.

The Co-operative Federation of Victoria is monitoring developments and will soon survey Victorian co-operatives to establish how the proposed changes to member contracts will affect them.

Members can obtain further information on National Competition Policy by contacting the secretary on (053) 457 466. □

The editor is grateful for the assistance of the Co-operative Federation of NSW

The editor is grateful to the Co-operative Federation of NSW for providing the background information for the articles on the Hilmer Report.

domestic and international competition, deregulation and the burdens of drought.

The proposals currently being considered will benefit Victorian co-operatives in that the aim is to free up interstate trade and allow the issue of membership shares interstate without having to comply with exacting and confusing registration/prospectus and other requirements presently imposed by divergent legislation.

These responses to the foreign registration problem are only part of a broader plan being considered by Ministers to introduce more consistent State co-operative legislation governing all aspects of co-operative activity. □

Jenni Mattila is available to advise co-operatives on interstate issues. Jenni can be contacted on (02) 221 2744

Minister commends certificate course

The Victorian Attorney-General, the Hon Mrs Jan Wade, has commended the Australian Certificate in Co-operative Management.

The Minister's comments were made during the 5th graduation ceremony of the certificate course, in October.

Mrs Wade said that co-operatives have not traditionally had the 'corporate image' naturally attaching to companies.

"It may not be appreciated that the management skills required to successfully operate a co-operative are no less onerous or necessary than those required for a profit orientated organisation," Mrs Wade said.

The Minister said that the certificate course developed by *Monash University* and the *Asia Pacific Co-operative Training Centre Ltd*, "is to be applauded as it provides an excellent basis for training middle and upper level managers of co-operatives."

Mrs Wade also said that co-operatives devoted to community service require specialised training, and outlined various areas that have arisen from queries to her Co-operatives Unit in the Office of Fair Trading and Business Affairs.

The Minister also announced that she is currently undertaking a major review of

the Co-operation Act with a view to introducing new legislation in the 1995 Autumn Session of Parliament.

"Whilst I anticipate that such legislation will bring along overdue efficiencies to the regulation of co-operatives, we will still look to initiatives such as this and, hopefully further courses in the future to help co-operative management keep abreast of current business practices and their duties under legislation," she said.

The graduation ceremony finished a successful year for the Centre.

The chairman of the Centre, Mr Richard Crosbie, said at its 4th annual general meeting that its courses are now receiving wide recognition.

"The Centre has been recognised by The National Co-operatives Council, and State Governments, particularly the NSW Government, have played a major role in promoting the Centre," he said.

Mr Crosbie also expressed the Centre's gratitude for the support received from the Victorian Education Foundation during the Centre's formative years. □

Asia Pacific Co-operative Training Centre

Training Programme

March - June 1995

MANAGEMENT COURSE

Australian Certificate in Co-operative Management:

AIRLIE BEACH, Far North Queensland

March 7-10, April 4-7, June 6-9

BALLINA, Northern New South Wales

March 16-19, April 27-30, May 25-28

SYDNEY

March 23-26, May 4-7, June 1-4

MELBOURNE

March 30 - April 2, May 11-14, June 8-11

DIRECTOR COURSES

Directors' Weekend

SYDNEY March 25-26

MELBOURNE April 1-2

Co-operative Directors' Certificate

SYDNEY March 25-26, May 6-7

MELBOURNE April 1-2, June 10-11

Strategic Planning Skills for Co-operative Boards, by arrangement.

For information on the above courses, contact Tim Dyce 02 332 4596 or Bruce Harvey on 03 615 0507

Avoiding the liquidator - pitfalls and solutions

Today, no director or manager can afford to have anything less than a detailed understanding of the operations of their co-operative, and be aware in the most complete way of its financial position.

With finance and money, control is everything. Without financial control, a co-operative's future is in jeopardy. Control is exercised by knowledge in the first instance and then, good decision making.

The very onerous responsibilities now thrust upon directors and managers make it imperative that they are in absolute charge of operations. To achieve that position, requires efficient reporting and constant reappraisal of both the co-operative's activity level and financial structure.

With positive financial control comes liquidity, and liquidity is a necessary requirement for the successful functioning of a co-operative. The following summaries some aspects of good financial control.

Common errors in financial management

- Not understanding the importance of cash.
- Lack of adequate financial information.
- Lack of understanding of information and not doing anything about it.
- Not keeping interested external parties informed.
- Unnecessary signing of personal guarantees.

Spotting emerging problems

All enterprises are susceptible to liquidity crisis. Common reasons for this problem are:

- The enterprise is trading at a loss.
- It is experiencing cashflow problems.

If the co-operative is trading at a loss, directors need to examine the background for such losses.

Action should be taken quickly otherwise the continuation of the loss can cause more problems, and lead to dissolution.

Cashflow problems develop when the inflow

and outflow of cash become unsynchronised, normally signifying inadequate control. It is a warning signal and can usually be rectified if action is taken quickly. It may also warn of a major upset in financial planning.

Cashflow problems may only be temporary and need not signal that the co-operative is trading at a loss.

Information that directors must demand

- Regular trading results and position.
- Realistic budget.
- Bank reconciliation and cash position.
- Aged list of debtors and creditors.
- Cashflow projections.
- Management reports.
- Statistics and ratios. □

This article is a summary of a paper presented by Robert E Corben to the NSW Key Issues Conference in October. Members of the Federation can obtain a copy of the paper from the secretary.

News in brief

National Co-ops Council

During the year, the National Co-operatives Council was formed by the five State co-operative federations including the Co-operative Federation of Victoria, to act as representative body for the advancement and protection of Australia's co-operatives and co-operation in all its forms.

Issues currently under consideration by the Council include its proposed structure, a national data base on co-operatives, National Competition Policy, education and training, and co-operatives legislation.

The Council has recognised the Asia Pacific Co-operative Training Centre as the principal provider of education and training for management and Directors of co-operatives throughout Australia.

In October, the Council met with State Co-operative Registrars to discuss the work being done by the Standing Committee of Attorneys-General on consistent provisions for interstate trade by co-operatives. The Council may meet the Registrars again in February 1995 to receive a progress report on the proposed provisions.

Plunkett Foundation

The Board of Directors of the Federation has accepted an offer made by the director of the U. K. Plunkett Foundation, Mr **Edgar Parnell**, to distribute the Foundation's publications throughout Australia.

In the 75 years since its formation, the Plunkett Foundation has developed an extensive body of knowledge on co-operative enterprise. The Foundation is committed to making information on co-operative and development issues available to the widest possible audience. It is expected that publications will be available in Australia in 1995.

Meetings with Ministers

In October, the Federation introduced Mr **Edgar Parnell** to the Hon **Bill McGrath**, Victorian Minister for Agriculture, and Ms **Carol Marple**, the Opposition's spokesperson for agriculture. Mr Parnell was well received, and the meetings proved fruitful in advancing co-operatives.

The Federation also spoke to the Attorney-General, the Hon **Jan Wade** in October about progress of new co-operatives legislation.

Attention Directors

Persons employed under the **Victorian Public Sector Management Act** or the **Teaching Services Act**, cannot accept or continue to hold office in a corporation, without the permission of their Department Head. As a co-operative is a corporation, the aforementioned requirement applies to Directors and Officers of co-operatives.

Conferences attended

The Federation's secretary, Tony Gill, attended

Report from the board

Co-operatives legislation

The Board of Directors of the Federation welcomes the announcement by the Victorian Attorney-General, Mrs Jan Wade, that she intends to introduce a new co-operatives act into State Parliament in 1995.

The announcement follows representations to the Minister by the Federation over the past year.

Victorian co-operatives have been calling for a new Act for the past 8 years. During this period, extensive consultations occurred with co-operatives, resulting in a number of proposals being put forward for change.

The Board has considered the proposals previously made, and has sent the Minister a detailed submission on matters that should be included in a new Act.

The Attorney-General has also accepted the Federation's offer to assist her department draw up the legislation.

Co-operative education

Co-operative education is more important today than ever before. The

future of the co-operative movement depends, in part, on decision makers, professionals and the general public understanding the co-operative concept.

Also, new and existing members of co-operatives need to be kept aware of the structure and benefits of co-operatives.

To this end, the board has prepared an education and promotion strategy.

The *Victorian Co-operative News* is being published every three months, and brochures are being prepared on co-ops.

Seminars also play an important part in education. The first seminar on *people centred businesses*, presented by Mr Edgar Parnell of the U.K. Plunkett Foundation in October, was a resounding success with participants gaining an understanding of the co-operative model in simple terms.

Other seminars are planned for 1995, and information on forthcoming events will be available early next year. □

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Seasons Greetings

The Board of the Federation
extends it's best wishes to
members and other co-operatives
for a prosperous 1995.

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Opinions expressed in the Victorian Co-operative News do not necessarily reflect those of the Co-operative Federation of Victoria Ltd.

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